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EXAMINER
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EL CHANTI, HUSSEIN A

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* RICHARD A. WATSON, JR.

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Appeal 2009-011777  
Application 09/893,693  
Technology Center 2400

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Decided: June 25, 2010

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Before MARC S. HOFF, CARLA M. KRIVAK,  
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 30-40, 42-44, 46-55, and 60-65. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

## INVENTION

Appellant's claimed invention is directed to communications between a client 702 and a proxy/IP tunnel in the same geographic location. The proxy/IP tunnel is identified by a remotely located host 704, thereby avoiding inherent delays due to distance between the client 702 and the remote host 704. *See generally* Fig. 7; Spec. 18:9–19:20.

Claim 30, reproduced below, is representative of the subject matter on appeal:

30. A method for enabling electronic communications between the Internet and a client system comprising:

- receiving, at a primary communications system configured to act as an access point to the Internet for data communications between the client system and the Internet, a request to access the Internet that is directed to the primary communication system, wherein the request is issued by an online identity operating the client system;

- processing the request at the primary communication system;

- identifying at the primary communication system, based on the processed request, a secondary communications system that is more optimally suited for providing Internet access to the client's system than the primary communications system; and

enabling configuration of the client system to direct subsequent Internet access requests from the client system and to use the secondary communications system as an access point to the Internet for subsequent data communications between the client system and the Internet, such that the subsequent data communications between the client and the Internet pass through the secondary communications system.

### THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Tarnanen                      US 6,904,026 B1              Jun. 7, 2005

The following rejection is before us for review:

The Examiner rejected claims 30-40, 42-44, 46-55, and 60-65 under 35 U.S.C. § 102(e) as being anticipated by Tarnanen.

Initially we note that Appellant's first argument, on page 10-11 of the Appeal Brief, is directed to the finality of the October 24, 2007, Office Action, which is related to a petitionable matter and not an appealable matter. *See* Manual of Patent Examining Procedure (MPEP) §§ 1002, 1201. Accordingly, we will not review that issue.

### ISSUE

Did the Examiner err by determining that Tarnanen teaches "a primary communications system configured to act as an access point to the Internet for data communications between the client system and the Internet" as recited in claims 30, 40, and 42?

## PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

## ANALYSIS

Appellant argues (App. Br. 13-14; Reply Br. 1-2) that while Tarnanen’s Internet Service Provider (ISP) server 13, which Examiner construed as the primary communications system (Ans. 8), identifies more optimal access points or Internet Access Points (IAPs), the ISP server 13 does not itself act as an access point as required by claim 30. We note that the same limitation requiring that the primary communications system is configured to act as an access point is also recited in independent claims 40 and 42. We are persuaded by Appellant’s argument.

We agree with the Examiner (Ans. 8-9) that Tarnanen teaches an ISP server 13 which identifies an IAP (i.e., a secondary communications system) that best corresponds to the location of the Mobile Station (MS) (i.e., client) (col. 9, l. 57–col. 10, l. 11). However, the Examiner has not provided any evidence, nor can we find support from the record before us, that the ISP server 13 acts as an access point as required by independent claims 30, 40, and 42.

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For the above reason, we will reverse the Examiner's rejection of claims 30, 40, and 42 and for similar reasons the rejections of claims 31-39, 43-44, 46-55, and 60-65.

### CONCLUSION

The Examiner erred by determining that Tarnanen teaches "a primary communications system configured to act as an access point to the Internet for data communications between the client system and the Internet."

### ORDER

The decision of the Examiner to reject claims 30-40, 42-44, 46-55, and 60-65 is reversed.

### REVERSED

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